



**Billing Code: 8070-01-P**

**FEDERAL HOUSING FINANCE AGENCY**

**[No. 2018–N–08]**

**Proposed Collection; Comment Request**

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** 30-day notice of submission of information collection for approval from Office of Management and Budget.

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**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA or the Agency) is seeking public comments concerning an information collection known as “Minimum Requirements for Appraisal Management Companies,” which has been assigned control number 2590-0013 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on July 31, 2018.

**DATES:** Interested persons may submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: (202) 395-3047, E-mail: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Please also submit comments to FHFA, identified by “Proposed Collection; Comment Request: ‘Minimum Requirements for Appraisal Management Companies, (No. 2018-N-08)’” by any of the following methods:

- *Agency Website:* [www.fhfa.gov/open-for-comment-or-input](http://www.fhfa.gov/open-for-comment-or-input).
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the

instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by *e-mail* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the Agency.

- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: “Minimum Requirements for Appraisal Management Companies, (No. 2018-N-08).”

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public through the electronic comment docket for this PRA Notice also located on the FHFA website.

**FOR FURTHER INFORMATION CONTACT:** Robert Witt, Senior Policy Analyst, Office of Housing and Regulatory Policy, by email at *Robert.Witt@fhfa.gov* or by telephone at (202) 649-3128; or Eric Raudenbush, Associate General Counsel, *Eric.Raudenbush@fhfa.gov*, (202) 649-3084 (these are not toll-free numbers); Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The Telecommunications Device for the Hearing Impaired is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

FHFA is seeking comments on its upcoming request to OMB to renew the PRA clearance for the following collection of information:

*Title:* Minimum requirements for appraisal management companies.

*OMB Number:* 2590-0013.

*Affected Public:* Participating States and State-registered Appraisal Management Companies.

## **A. Need for and Use of the Information Collection**

In 2015, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Bureau of Consumer Financial Protection (Bureau), and FHFA (collectively, the Agencies) jointly issued regulations<sup>1</sup> to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) relating to the eligibility of appraisal management companies (AMCs) to provide appraisal management services for real estate related financial transactions that are engaged in, contracted for, or regulated by a “federal financial institutions regulatory agency” or the Resolution Trust Corporation (“Federally related transactions”).<sup>2</sup> Generally, these statutory provisions provide that an AMC either be registered with a state’s appraiser certifying and licensing agency or be subject to oversight by a federal financial institutions regulatory agency in order to participate in a Federally related transaction.<sup>3</sup>

As required by the Dodd-Frank Act provisions, the Agencies’ joint AMC

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<sup>1</sup> See 80 FR 32658 (June 9, 2015). By agreement, the responsibility for clearance under the PRA of information collections contained in the joint regulations is shared only by the FDIC, OCC, Board, and FHFA.

<sup>2</sup> See 12 U.S.C. § 3350(4), (5). “Federal financial institutions regulatory agency” includes the FDIC, OCC, Board, and National Credit Union Administration. See 12 U.S.C. § 3350(6).

<sup>3</sup> Section 1117 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 U.S.C. § 3346, permits states to establish an appraiser certifying and licensing agency “to assure the availability of State certified and licensed appraisers for the performance in a State of appraisals in federally related transactions and to assure effective supervision of the activities of certified and licensed appraisers.” The Dodd-Frank Act amended section 1117 to provide that the duties of a state appraiser certifying and licensing agency may also include the registration and supervision of AMCs. Although states are not required by federal law to register and supervise AMCs, or even to establish an appraiser certifying and licensing agency, an AMC that is not registered with such a state agency (except for those regulated by a federal financial institutions regulatory agency) may not participate in a federally-related transaction in that state. See 12 U.S.C. § 3353(f)(1).

regulations establish minimum requirements for the registration and supervision of AMCs to be applied by states that have elected to establish an appraiser certifying and licensing agency with authority to register and supervise AMCs (participating states).<sup>4</sup> The joint regulations also implement the statutory requirement that states report to the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) the information required by the ASC to administer a national registry of AMCs (AMC National Registry or Registry).<sup>5</sup> When fully established, the AMC National Registry will include AMCs that are either: (1) subsidiaries owned and controlled by an insured depository institution (as defined in 12 U.S.C. 1813) and regulated by either the FDIC, OCC, or Board (federally regulated AMCs)<sup>6</sup>; or (2) registered with, and subject to supervision of, a state appraiser certifying and licensing agency. FHFA's AMC regulation, located at Subpart B of 12 CFR part 1222, is substantively identical to the AMC regulations of the FDIC, OCC, and Board and contains the recordkeeping and reporting requirements described below.<sup>7</sup>

*1. State Reporting Requirements (IC #1)*

The regulation requires that each state electing to register AMCs for purposes of permitting AMCs to provide appraisal management services relating to covered transactions in the state submit to the ASC the information regarding such AMCs required to be submitted by ASC regulations or guidance concerning AMCs that operate in the state.<sup>8</sup>

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<sup>4</sup> See 12 CFR 1222.23.

<sup>5</sup> See 12 U.S.C. § 3353(e).

<sup>6</sup> See 12 CFR 1222.21(k) (defining "Federally regulated AMC").

<sup>7</sup> See 12 CFR 1222.20 through 1222.26. For clarity, the regulatory citations in this notice are to FHFA's version of the joint regulations only.

<sup>8</sup> See 12 CFR 1222.26.

## 2. State Recordkeeping Requirements (IC #2)

States seeking to register AMCs must have an AMC registration and supervision program. The regulation requires each participating state to establish and maintain within its appraiser certifying and licensing agency a registration and supervision program with the legal authority and mechanisms to: (i) review and approve or deny an application for initial registration; (ii) periodically review and renew, or deny renewal of, an AMC's registration; (iii) examine an AMC's books and records and require the submission of reports, information, and documents; (iv) verify an AMC's panel members' certifications or licenses; (v) investigate and assess potential violations of laws, regulations, or orders; (vi) discipline, suspend, terminate, or deny registration renewals of AMCs that violate laws, regulations, or orders; and (vii) report violations of laws, regulations, or orders, and disciplinary and enforcement actions to the ASC.<sup>9</sup>

The regulation requires each participating state to impose requirements on AMCs that are not federally regulated (non-federally regulated AMCs) to: (i) register with and be subject to supervision by a state appraiser certifying and licensing agency in each state in which the AMC operates; (ii) use only state-certified or state-licensed appraisers for federally regulated transactions in conformity with any federally regulated transaction regulations; (iii) establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type; (iv) direct the appraiser to perform the assignment in accordance with the Uniform Standards of Professional Appraisal Practice; and (v)

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<sup>9</sup> See 12 CFR 1222.23(a).

establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with sections 129E(a) through (i) of the Truth-in-Lending Act.<sup>10</sup>

### 3. AMC Reporting Requirements (IC #3)

The regulation provides that an AMC may not be registered by a state or included on the AMC National Registry if the company is owned, directly or indirectly, by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any state for a substantive cause.<sup>11</sup> The regulation also provides that an AMC may not be registered by a state if any person that owns 10 percent or more of the AMC fails to submit to a background investigation carried out by the state appraiser certifying and licensing agency.<sup>12</sup> Thus, each AMC registering with a state must provide information to the state on compliance with those ownership restrictions. Further, the regulation requires that a federally regulated AMC report to the state or states in which it operates the information required to be submitted by the state pursuant to the ASC's policies, including policies regarding the determination of the AMC National Registry fee, and information regarding compliance with the ownership restrictions described above.<sup>13</sup>

### 4. AMC Recordkeeping Requirements (IC #4)

An entity meets the definition of an AMC that is subject to the requirements of the AMC regulation if, among other things, it oversees an appraiser panel of more than 15 state-certified or state-licensed appraisers in a state, or 25 or more state-certified or

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<sup>10</sup> See 12 CFR 1222.23(b). Sections 129E(a) through (i) of the Truth-in-Lending Act are located at 15 U.S.C. §§ 1639e(a) through (i).

<sup>11</sup> See 12 CFR 1222.24(a) and 1222.25(b).

<sup>12</sup> See 12 CFR 1222.24(b).

<sup>13</sup> See 12 CFR 1222.25(c).

state-licensed appraisers in two or more states, within a given 12-month period.<sup>14</sup> For purposes of determining whether a company qualifies as an AMC under that definition, the regulation provides that an appraiser in an AMC's network or panel is deemed to remain on the network or panel until: (i) the AMC sends a written notice to the appraiser removing the appraiser with an explanation; or (ii) receives a written notice from the appraiser asking to be removed or a notice of the death or incapacity of the appraiser.<sup>15</sup> The AMC would retain these notices in its files.

## **B. Burden Estimate**

FHFA's burden estimates for the information collections described above appear below. The estimates below remain the same as those set forth in the 60-day notice, despite one commenter's assertion that some of the assumptions underlying those burden estimates are incorrect. Those assertions and FHFA's responses are addressed below in section C of the notice.

There is no change in the existing methodology or substance of this information collection. For the information collections described above, the general methodology is to compute the industry wide burden hours for participating states and AMCs and then assign a share of the burden hours to each of the Agencies for each information collection.

As noted above, each of the Agencies' AMC regulations contains reporting and recordkeeping requirements applying to participating states and to both federally regulated and non-federally regulated AMCs. The Agencies have estimated that approximately 200 entities meet the regulatory definition of an "appraisal management

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<sup>14</sup> See 12 CFR 1222.21(c)(iii).

<sup>15</sup> See 12 CFR 1222.22(b).

company”<sup>16</sup> and that, of those 200 AMCs, approximately 120 are federally regulated and approximately 80 are non-federally regulated.<sup>17</sup> Unlike the insured depository institutions regulated by the OCC, FDIC, and Board, none of FHFA’s regulated entities owns or controls an AMC or, by law, could ever own or control an AMC. Accordingly, the Agencies have agreed that responsibility for the burdens arising from reporting and recordkeeping requirements imposed upon federally regulated AMCs are to be split evenly among the OCC, FDIC, and Board (*i.e.*, the equivalent of 40 federally regulated AMCs for each agency) and that FHFA will not include those burdens in its totals. The four Agencies have agreed to split the total burdens imposed upon participating states and upon non-federally regulated AMCs evenly between them (*i.e.*, by taking responsibility for 25 percent of the burden per agency or, in the case of non-federally regulated AMCs, the equivalent of 20 such AMCs for each agency).

Thus, for ICs #1 and #2, which relate to reporting and recordkeeping requirements imposed upon participating states, each agency is responsible for 25 percent of the total estimated burden. For ICs #3 and #4, which relate to reporting and recordkeeping requirements imposed upon both federally regulated AMCs and non-federally regulated AMCs, the OCC, FDIC, and Board are each responsible for the burden imposed upon a total of 60 AMCs (40 federally regulated plus 20 non-federally regulated), or 30 percent of the total burden, while FHFA is responsible only for the burden imposed upon 20 non-federally regulated AMCs, or 10 percent of the total burden.

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<sup>16</sup> In FHFA’s regulations, this definition is set forth at 12 CFR 1222.21(c).

<sup>17</sup> FHFA anticipates that definitive information on the total number of AMCs and on the relative number of federally regulated and non-federally regulated AMCs will become available after the AMC National Registry becomes fully operational in 2020.



The Agencies estimate the total annualized hour burden placed on respondents by the information collection in the joint AMC regulations to be 1,445 hours. FHFA estimates its share of the hour burden to be 183 hours. The calculations on which those estimates are based are described below.

*1. State Reporting Requirements (IC #1)*

The total estimated burden hours for states reporting to the ASC are calculated by multiplying the number of states by the hour burden per state. The burden hours are then divided equally among the FDIC, OCC, Board, and FHFA, with each agency responsible for 25 percent of the total. For purposes of this calculation, the number of states is set at 55 which, in conformity with the regulatory definition of “state,” includes all 50 U.S. states as well as the Commonwealth of the Northern Mariana Islands, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.<sup>18</sup> The burden estimate of 1 hour per report is unchanged from the estimate provided for the currently-approved ICR. Therefore, the estimated total state reporting burden attributable to all of the Agencies is: 55 states x 1 hour/state = 55 hours. The estimated burden hours attributable to FHFA are 55 hours x 25 percent = 14 hours (rounded to the nearest whole number).

*2. State Recordkeeping Requirements (IC #2)*

The estimated burden hours on participating states for developing and maintaining an AMC licensing program is calculated by multiplying the number of states without a registration and licensing program by the hour burden to develop the system. The total burden hours are then equally divided among the FDIC, OCC, Board, and FHFA. According to the Appraisal Institute, as of July 26, 2017, there were 5 states

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<sup>18</sup> See 12 CFR 1222.21(o).

that had not developed a system to register and oversee AMCs.<sup>19</sup> The burden estimate of 40 hours per state without a registration system is unchanged from the estimate provided for the currently-approved ICR. Therefore, the total estimated burden attributable to all of the Agencies is: 5 states  $\times$  40 hours/state = 200 hours. The estimated burden hours attributable to FHFA are 200 hours  $\times$  25 percent = 50 hours.

### 3. AMC Reporting Requirements (IC #3)

The burden for AMC reporting requirements for information needed to determine the AMC National Registry fee and information regarding compliance with the AMC ownership restrictions is calculated by multiplying the number of AMCs by the frequency of response and then by the burden per response. As described above, 30 percent of the burden hours are then assigned to each of the FDIC, OCC, and Board, while 10 percent are assigned to FHFA.

The frequency of response is estimated as the number of states that do not have an AMC registration program in which the average AMC operates.<sup>20</sup> As discussed above, 5 states do not have AMC registration or oversight programs. According to the Consumer Financial Protection Bureau (CFPB), the average AMC operates in 19.56 states.<sup>21</sup> Therefore, the average AMC operates in approximately 2 states that do not have AMC registration systems: (5 states/55 states)  $\times$  19.56 states = 1.778 states, rounded to 2 states. The burden estimate of one hour per response is unchanged from the estimate provided for the currently-approved ICR. Therefore, the total estimated

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<sup>19</sup> Appraisal Institute “Enacted State AMC Laws,” <https://www.appraisalinstitute.org/advocacy/enacted-state-amc-laws1/>.

<sup>20</sup> The number of states includes all U.S. states, territories, and districts to include: The Commonwealth of the Northern Mariana Islands; the District of Columbia; Guam; Puerto Rico; and the U.S. Virgin Islands.

<sup>21</sup> The CFPB conducted a survey of 9 AMCs in 2013 regarding the provisions in the regulation and the related PRA burden.

hour burden is:  $200 \text{ AMC}s \times 2 \text{ states} \times 1 \text{ hour} = 400 \text{ hours}$ . The estimated burden hours attributable to FHFA are  $400 \text{ hours} \times 10 \text{ percent} = 40 \text{ hours}$ .

#### 4. AMC Recordkeeping Requirements (IC #4)

The burden for recordkeeping by AMCs of written notices of appraiser removal from a network or panel is estimated to be equal to the number of appraisers who leave the profession per year multiplied by the estimated percentage of appraisers who work for AMCs, then multiplied by burden hours per notice. As described above, 30 percent of the burden hours are then assigned to each of the FDIC, OCC, and Board, while 10 percent are assigned to FHFA.

The number of appraisers who leave an AMC annually, either by resigning, being laid off, or having their licenses revoked or surrendered, is estimated to be 9,881. The burden estimate of 0.08 hours per notice is unchanged from the estimate provided for the currently-approved ICR. Therefore, the estimated total hour burden is:  $9,881 \text{ notices} \times 0.08 \text{ hours} = 790 \text{ hours}$  (rounded to the nearest whole number). The estimated burden hours attributable to FHFA are  $790 \text{ hours} \times 10 \text{ percent} = 79 \text{ hours}$ .

### **C. Response to Comments Received**

In accordance with the requirements of 5 CFR 1320.8(d), FHFA published an initial notice and request for comments regarding the renewal of the PRA clearance for this information collection in the **Federal Register** on May 16, 2018 (“60-day notice”).<sup>22</sup> The 60-day comment period closed on July 16, 2018. FHFA received two comments.

One comment letter, from an individual, asserted that this collection of information is not necessary for the proper performance of FHFA functions because

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<sup>22</sup> See 83 FR 22681 (May 16, 2018).

“there is currently too much oversight which cost excessive amounts of money” and that those costs are “passed down to the consumers through the AMCs to cover costs to maintain regulatory compliance.” Because these comments relate to regulatory burden generally and not to the collection of information under the joint AMC regulation, FHFA has not addressed them in this notice.

The second comment letter, from a trade association representing AMCs, addressed a number of issues relating to the collection of information under the joint AMC regulation. First, the commenter stated that the collection of information is “necessary” and has “practical utility,” but “only to the extent that the information collected serves the proper purpose to promote appraiser independence while ensuring a healthy real estate valuation market.” FHFA disagrees with the commenter’s implication that the “proper purpose” of the collection of information under the joint AMC regulations is limited to the promotion of appraiser independence. In fact, as required by statute, the AMC regulations address all issues on which the Agencies were required to promulgate regulations—including minimum requirements for registration of AMCs in participating states,<sup>23</sup> registration limitations for AMCs,<sup>24</sup> and the reporting of information by AMCs to the ASC<sup>25</sup>—and not merely the promotion of appraiser independence. The collection of information is necessary for implementation of those requirements. To the extent that the commenter disagrees with the scope and requirements of the joint AMC regulations, FHFA notes that those regulations may not be rescinded or revised through the PRA renewal process.

The second comment letter also questioned the accuracy of FHFA’s estimates of

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<sup>23</sup> See 12 U.S.C. § 3353(a).

<sup>24</sup> See 12 U.S.C. § 3353(d).

<sup>25</sup> See 12 U.S.C. § 3353(e).

the burdens of the collection of information. Asserting that the Agencies' estimate that there are 200 AMCs currently operating in the U.S. is too low, the commenter stated, without providing any further information or support, that "industry estimates" as to the number of AMCs "are closer to 400." As stated in the 60-day notice, because the actual number of AMCs is not currently known and will not be known until the AMC National Registry is fully operational in 2020, the Agencies made a best guess that 200 entities currently qualify as an AMC, as that term is defined under the joint AMC regulations.<sup>26</sup> Because the commenter has provided no support for its assertion regarding the current number of AMCs subject to the joint regulations, FHFA's estimate as to that number remains unchanged.

The commenter further asserted that, contrary to the Agencies' estimates that 60 percent of existing AMCs (or 120 out of 200) are federally regulated, it knows of only one federally regulated AMC in existence. As with respect to the total number of AMCs, the Agencies made a best guess estimate as to the relative number of federally regulated and non-federally-regulated AMCs in the absence of any available empirical data on this issue pending completion of the AMC National Registry. As explained above, that estimate has no bearing on the Agencies' estimates as to the total amount of burden imposed by the collections of information under the joint AMC regulations, but relates only to the appropriate distribution among the rulemaking Agencies of responsibility (under the PRA) for a portion of the total estimated burden. Given this,

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<sup>26</sup> The joint regulations define "appraisal management company" generally to mean an entity that: (1) provides appraisal management services (for example, maintaining a panel of certified and licensed appraisers to perform appraisals, managing the process of having an appraisal performed, collecting fees, and paying appraisers) to creditors or to secondary mortgage market participants; (2) provides such services in connection with valuing a consumer's primary dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and (3) oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States within a 12-month period. *See* 12 CFR 1222.21(c)(1).

and the lack of support provided by the commenter for its estimate as to the actual number of federally regulated AMCs, FHFA's estimate as to the relative number remains unchanged from that reflected in the 60-day notice.

Other issues addressed in the second comment letter, including recommendations that the ASC issue additional guidance to states and AMCs concerning the AMC minimum requirements, find opportunities to develop reporting efficiencies in the state licensing system, and be more aggressive in supporting modernization of the outdated National Appraiser Registry do not relate to the collection of information under the joint AMC regulation. The Agencies, however, will forward these suggestions to the ASC for consideration.

#### **D. Comments Request**

In accordance with the requirements of 5 CFR 1320.10(a), FHFA is publishing this second notice to request comments regarding the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: July 26, 2018.

**Kevin Winkler,**

*Chief Information Officer,*

*Federal Housing Finance Agency.*

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